IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible].

No. 230.

CAIRO, TRUMAN & SOUTHERN RAILROAD COMPANY

vs.

THE UNITED STATES OF AMERICA AND JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS.

PETITION FOR REHEARING.

S. G. ASHBAUGH,
Attorney for Appellant.

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Comes now the appellant above named and respectfully presents this petition for a rehearing of this case, and further asks that the same may be set down for another argument at the same time as the argument to be presented to this Court in the case of the *Marion and Rye Valley Railroad Company vs. The United States,* number 991 of the present docket, as these cases grow out of the same transactions had with short-line railroads under the Federal Control Act, and that

it may be set for hearing at an early convenience of the Court.

Basis of Petition.

The petition in the case of the Cairo, Truman and Southern Railway Company, No. 230, is practically the same as the petition for rehearing in the case of the St. Louis, Kennett and Southeastern Railroad Company, No. 229. Reference is therefore had to the petition in that case and the statements there made are reaffirmed in this petition as far as the same may be applicable. The difference between the condition of the one suit and the condition in the other is practically immaterial, so that the petition in the one case may be used as the petition in the other.

One fact, however, appears in this suit which does not appear in the facts in the other. On May 19, 1921, the Interstate Commerce Commission settled the claims of the Cairo, Truman & Southern Railroad Co. for its losses during the last 20 months of the Federal Control period, and in settlement paid to that company the sum of $38,157.71, which amount was duly certified to the Treasury and the proper warrant was issued.

It appears from the record in this case that at the time of the settlement the Cairo, Truman and Southern Railroad Company had an outstanding contract, set out at page 5 of the record, which contract has now been construed to have been a receipt in full for

> "all claims and rights, at law or in equity, which it now has or hereafter can have against the United States, the President, the Director General of Railroads or any agent or agency thereof, by virtue of

anything done or omitted pursuant to the acts of Congress relating to the Federal Control of railroads, or any act of the President or the Director General of Railroads."

This contract now having been construed as a receipt in full, of which there are about 100 in existence, and having been in the possession of the Interstate Commerce Commission at the time the payments were made, the question now becomes important as to the validity of this payment, and, if invalid, shall it be recovered back into the Treasury of the United States?

It is hardly possible to argue that a payment by the Government can be valid with a receipt in full on the desk of the payer. If that payment was authorized by Section 204 of the Transportation Act of 1920, then the contract cannot properly be construed as a receipt in full for the claims mentioned in the contract.

If this payment to the appellant is invalid and subject to a return to the Treasury, then every payment made to any short-line railroad which had a contract similar to the one in suit must also be invalid and subject to a return. This condition will subject all such railroads to the inevitable insolvency which would follow such repayment. This is not the purpose for which the Transportation Act of 1920 was passed by Congress. This is not the purpose for which the Interstate Commerce Commission made the settlement and for which the Treasury made the payment. This departmental construction, which applied to the payment above set out, is sufficient reason in itself for a rehearing of this case and a reconsideration of the original argument. The discrepancy between a receipt in full and a subsequent pay-

ment is so irreconcilable that in cases as important as the ones here presented some solution must be found, and this solution at the present time is a rehearing. An error, a mistake, was made in the construction of these contracts, which were never intended nor understood as containing a receipt in full for the claims subsequently settled by the Interstate Commerce Commission. This Commission could not have misunderstood the nature of these contracts in the hundreds of settlements already made. They are not paying claims with receipts in full in their possession. The only solution for this condition is a rehearing of the case.

Respectfully submitted,

S. S. ASHBAUGH,
Attorney for Appellant.

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